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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6788  
DATE COMPLAINT FILED: February 25, 2014  
DATE OF NOTIFICATION: February 28, 2014  
LAST RESPONSE RECEIVED: May 12, 2014  
ACTIVATED: June 17, 2014

EARLIEST SOL: November 26, 2017  
LATEST SOL: December 22, 2017  
ELECTION CYCLE: 2014

COMPLAINANT: James R. Moore

RESPONDENTS: Jim Tracy  
Jim Tracy State Senate Committee and Adam  
Coggin in his official capacity as treasurer  
Jim Tracy for Congress and Shane Reeves in his  
official capacity as treasurer

RELEVANT STATUTES: 52 U.S.C. § 30125(e)<sup>1</sup>  
52 U.S.C. § 30125(f)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

Jim Tracy is a member of the Tennessee State Senate and was a candidate for the U.S. House of Representatives from Tennessee's 4th Congressional District in the 2014 Republican primary election.<sup>2</sup> The Complaint alleges that Tracy and the Jim Tracy State Senate Committee ("State Committee") paid for consulting services for Tracy's federal committee, Jim Tracy for Congress ("Federal Committee"), in violation of the Act.

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 to new Title 52 of the United States Code.

<sup>2</sup> On August 7, 2014, Tracy lost the primary election with 44.8% of the vote.

Respondents deny the allegations, asserting that the services paid for by the State Committee were related to Tracy's duties as a state senator and his 2012 Tennessee State Senate reelection campaign, not his federal campaign.

As discussed below, we recommend that the Commission find no reason to believe that Respondents violated 52 U.S.C. §§ 30125(e) or 30125(f) (formerly 2 U.S.C. §§ 441i(e) and 441i(f)) regarding specific disbursements made by Tracy's State Committee, and close the file in this matter.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Jim Tracy was reelected as a Tennessee State Senator on November 6, 2012. See <http://www.capitol.tn.gov/senate/members/sl4.html>. On January 1, 2013, Tracy reportedly announced his candidacy for the United States House of Representatives. Tracy filed his Statement of Candidacy with the Commission on January 11, 2013, designating the Federal Committee as his authorized campaign committee, and the Federal Committee filed its Statement of Organization on the same day. See Chas Sisk, *State Sen. Tracy Says Breakfast Was About Constituents*, NASHVILLE TENNESSEAN, Oct. 8, 2013 (Compl. Attach. 1 (Feb. 25, 2014)); Tracy Statement of Candidacy (Jan. 11, 2013); Jim Tracy for Congress Statement of Organization (Jan. 11, 2013).

In the time period after Tracy was reelected to the Tennessee State Senate, but before he formally declared his federal candidacy (i.e., between November 6, 2012, and January 1, 2013), Tracy engaged in a number of activities that were paid for by the State Committee, including fundraising, holding a pancake breakfast for constituents, sending out Christmas cards, and sending out a "voter survey." See Federal and State Committee Resp.; Chas Sisk, *State Sen. Tracy Says Breakfast Was About Constituents*, NASHVILLE TENNESSEAN, Oct. 8, 2013 (Compl.

1 Attach. 1). According to one report, at the time of the pancake breakfast on December 22, 2012,  
2 Tracy was known to be considering a run for Congress, though he declined to comment on that  
3 possibility at the breakfast. *Id.*

4 As detailed in the chart that follows, the State Committee disclosed making the following  
5 disbursements from November 14, 2012, through December 27, 2012, to Barrett Johns Strategies  
6 ("Barrett Johns") and Majority Strategies, totaling \$35,000 and \$44,766, respectively. *See* State  
7 Committee 4th Quarter disclosure report (Feb. 13, 2013).

Date	Recipient	Purpose	Amount
11/26/2012	Barrett Johns Strategies	Professional Services – November	\$5,000
12/07/2012	Barrett Johns Strategies	Professional Services – Year End	\$20,000
12/27/2012	Barrett Johns Strategies	Professional Services – Christmas Breakfast	\$10,000
12/01/2012	Majority Strategies	Professional Services – Card	\$20,388.03
12/04/2012	Majority Strategies	Professional Services – Mail Invitation	\$14,378.22
12/11/2012	Majority Strategies	Professional Services – Survey	\$10,000
		<b>TOTAL</b>	<b>\$79,766.25</b>

8 The Complaint alleges that these disbursements to Barrett Johns and Majority Strategies  
9 violate the Act because they were for services related to Tracy's federal campaign. In support of  
10 the allegations, Complainant notes the following: (1) the State Committee's total disbursements  
11 in the fourth quarter of 2012 (more than \$108,000) "far exceed" disbursements for the remainder  
12 of 2012; (2) prior to the November 6, 2012, general election, the State Committee's payments to  
13 Barrett Johns (\$7,980) were much lower, and it made no payments to Majority Strategies  
14 whatsoever; (3) "in the same pre-election period," the State Committee paid \$39,004 to Margin  
15 of Victory Partners, another campaign consulting firm, indicating that "Margin of Victory was  
16 the firm [Tracy] used for the majority of his campaign services prior to the general election"; and  
17 (4) the Federal Committee disclosed payments of \$5,000 per month to Barrett Johns or Rachel

1 Barrett & Co, LLC, which share the same address and have one of the same principals, Rachel  
2 Barrett, and this amount appears to be similar to the amount of the retainer agreement that the  
3 State Committee had with Barrett Johns in August 2012. Complaint at 1-2.

4 In response, Respondents state that the State Committee's disbursements were unrelated  
5 to Tracy's federal candidacy.<sup>3</sup> Specifically, Respondents assert that the State Committee  
6 retained Barrett Johns as a consultant to assist the State Committee in organizing events and  
7 fundraising. The \$20,000 that the State Committee paid the firm on December 7, 2012, was for a  
8 \$4,000 monthly retainer from August to December 2012 for fundraising. Resp. at 2 (May 12,  
9 2014).<sup>4</sup> Adam Coggin, treasurer of the State Committee, provided an affidavit averring that the  
10 State Committee's retainer with Barrett Johns was for work exclusively in connection with  
11 Tracy's state senate campaign. *Id.*, Attach. A (Coggin Aff. ¶ 3). Respondents assert that, given  
12 the \$335,117 that the State Committee raised "during this time" for Tracy's state senate  
13 campaign, the \$20,000 fee to Barrett Johns was reasonable "for the type, kind of work, and  
14 duration of the work performed by" Barrett Johns.<sup>5</sup> *Id.* at 4. Respondents also assert that it is  
15 established practice in the industry to retain a fundraiser throughout the year even after an  
16 election has ended. *Id.*

17 Further, Respondents state that the State Committee paid \$15,000 to Barrett Johns to  
18 organize and staff a Christmas Family Breakfast, which was held on December 22, 2012, and  
19 advertised only in Tracy's state senate district with invitations sent only to households in the

<sup>3</sup> The response was filed on behalf of the Federal Committee and the State Committee. Jim Tracy did not submit a response.

<sup>4</sup> Respondents provided an undated invoice for the \$20,000 retainer. *See id.*, Attach. B.

<sup>5</sup> Respondents' reference to Barrett Johns raising \$335,117 on behalf of the State Committee "during this time" is unclear. The State Committee reported total receipts of \$146,443 during calendar year 2012, including \$59,598 in receipts on the reports covering the period between August and December 2012. *See* <http://www.tn.gov/tref/>. The State Committee disclosed the receipt of corporate contributions, permissible under Tennessee law. *See* Tenn. Code Ann. § 2-10-302.

1 district. Resp. at 2; Coggin Aff. ¶ 6.<sup>6</sup> Respondents explain that Tracy had in previous years held  
2 an annual event that was free for his state senate constituents, such as a football tailgate party in  
3 2011 and a fish fry in 2010. Resp. at 2. Tracy reportedly described the event as “just about  
4 thanking the folks who have supported me and my family over the last eight years,” and he stated  
5 that “We do something like this every year.”<sup>7</sup> *Id.*, Attach. E (*Tracy Brings Breakfast, Crowd*  
6 *Brings Gifts*, DAILY NEWS JOURNAL, Dec. 23, 2012).

7 With regard to the disbursements to Majority Strategies, the State Committee states that it  
8 paid Majority Strategies to print and mail three different communications. First, it paid \$14,378  
9 to Majority Strategies to print and mail the invitations for the pancake breakfast. Resp. at 3.  
10 A copy of the invitation and the related invoice from Majority Strategies are attached to the  
11 response. *Id.*, Attach. D. Coggin avers that the invitation was sent only to state senate  
12 constituents. Coggin Aff. ¶ 5.

13 Second, the State Committee paid Majority Strategies \$10,000 to print and mail a survey  
14 to Tracy’s state senate constituents in December 2012. Resp. at 2 and 4. Respondents assert that  
15 the survey was a routine communication that did not refer to a future election, focused on state  
16 issues, and was made before Senator Tracy announced his campaign for U.S. Congress. *Id.* at 4.  
17 Coggin avers that the survey was sent only to state senate constituents. Coggin Aff. ¶ 4. A copy  
18 of the legislative survey and the invoice from Majority Strategies are attached to the response.  
19 Resp., Attach. C. The survey is fronted by a photograph of Tracy, labeled “State Senator Jim

<sup>6</sup> Coggin refers, perhaps inadvertently, to “Bennett Johns Strategies” as the payee. Coggin Aff. ¶ 6. As with the retainer, Respondents provided two undated invoices from the Barrett Johns totaling \$15,000 for the Christmas Breakfast. Resp., Attach. F.

<sup>7</sup> In the *Nashville Tennessean* article attached to the complaint, Tracy is quoted on his view of the breakfast: “I always try to be accessible to my constituents, and this is a perfect way for them to talk to me about the issues, especially with two new counties in my Senate district.” Compl. Attach. 1. As previously noted, the article also notes that Tracy had been rumored to be considering a run for U.S. Congress. *Id.* When asked about that possibility, Tracy reportedly replied, “We’ll let you know.” Resp., Attach. E (*Tracy Brings Breakfast, Crowd Brings Gifts*, DAILY NEWS JOURNAL, Dec. 23, 2012).

1 Tracy" and "WORKING TO CREATE JOBS. Listening to You. Representing You." *Id.*  
2 The inside of the survey references "issues before the 108th General Assembly" and several  
3 legislative accomplishments, and asks eleven questions that appear to focus on state-level issues  
4 (e.g., "Do you favor legislation to allow the sale of wine in grocery stores in Tennessee?"). *Id.*

5 Finally, the State Committee paid \$20,388 to Majority Strategies to print and mail a  
6 Christmas card. Resp. at 2. Again, Coggin avers that the survey was sent only to state senate  
7 constituents. Coggin Aff. ¶ 7. Respondents assert that the State Committee traditionally sends a  
8 Christmas card to constituents each year, which was the ordinary practice of state legislators, and  
9 the Christmas card did not reference a future campaign. Resp. at 5. A copy of the Christmas  
10 card and the invoice to Majority Strategies are attached to the response. *Id.*, Attach. G.

11 **B. Legal Analysis**

12 Federal candidates and entities directly or indirectly established, financed, maintained, or  
13 controlled by or acting on behalf of those candidates are prohibited from soliciting, receiving,  
14 directing, transferring, or spending funds in connection with an election for federal office unless  
15 the funds are subject to the limits, prohibitions, and reporting requirements of the Act. 52 U.S.C.  
16 § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1)); 11 C.F.R. §§ 300.60, 300.61. Tennessee law  
17 allows candidates to accept contributions from corporations. *See* Tenn. Code Ann. § 2-10-302.  
18 Thus, contributions made to the State Committee are not subject to the Act's prohibition on  
19 corporate contributions, and the State Committee disclosed that it has accepted corporate  
20 contributions. *See* 52 U.S.C. § 30118 (formerly 2 U.S.C. § 441b); *see* p. 4, n.5, *supra*. Moreover,  
21 Commission regulations prohibit the transfer of funds or assets from a candidate's nonfederal  
22 campaign committee to his or her federal campaign committee.<sup>8</sup>

<sup>8</sup> *See* 11 C.F.R. § 110.3(d) (transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited); Transfers of Funds from State to Federal Campaigns, 57 Fed. Reg. 36,344, 36,345 (Aug. 12,

1 The Act also prohibits state and local candidates, officeholders, and their agents from  
2 paying for a communication that refers to a clearly identified candidate for federal office, and  
3 that promotes, attacks, supports, or opposes ("PASO") a candidate for that office, unless the  
4 funds are subject to the limitations, prohibitions, and reporting requirements of the Act.

5 52 U.S.C. § 30125(f)(1) (formerly 2 U.S.C. § 441i(f)(1)); 11 C.F.R. §§ 300.70, 300.71.

6 Section 30125(f)(1), however, does not apply if the public communication is in connection with  
7 an election for state or local office and refers to one or more candidates for state or local office or  
8 to a state or local officeholder but does not PASO any candidate for federal office. 52 U.S.C.  
9 § 30125(f)(2) (formerly 2 U.S.C. § 441i(f)(2)); 11 C.F.R. § 300.72.

10 The Complaint alleges that Tracy's State Committee paid for services for Tracy's federal  
11 campaign, namely, fundraising consulting, a Christmas breakfast, a Christmas card and a  
12 legislative survey. The response, supported by an affidavit from the State Committee treasurer,  
13 asserts that these late 2012 activities were not in connection with Tracy's federal campaign but  
14 were related to his duties as a state senator and his 2012 reelection to that office.

15 Although Tracy undertook these activities shortly before he declared his federal  
16 candidacy, the information provided by Respondents sufficiently refutes the Complaint's  
17 allegation that they were in connection with Tracy's federal campaign. The written materials at  
18 issue – the invitation to the Christmas breakfast, the Christmas card and the legislative survey –  
19 reference Tracy solely as a state senator and, according to a sworn affidavit by the State  
20 Committee treasurer, were only sent to Tracy's state senate constituents. The Complaint does  
21 not allege that the materials were mailed to a wider audience, and we do not have information

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1992) (Explanation and Justification). *See, e.g.*, MUR 6267 (Paton For Senate) (Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); and MUR 5426 (Dale Schultz for Congress) (Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

1 suggesting as much.<sup>9</sup> Further, the materials make no reference to any federal candidacy. *See*  
2 Resp., Attachs. C, D, G; Coggin Aff. ¶¶ 4, 5, 7. As for the State Committee's \$20,000 payment  
3 to Barrett Johns in December 2012 covering five months of fundraising services,<sup>10</sup> treasurer  
4 Coggin avers the services were exclusively in connection with Tracy's 2012 state senate  
5 campaign, and we have no information to the contrary. *See* Coggin Aff. ¶ 3. Similarly, the  
6 available information does not suggest that Tracy referenced a federal candidacy or solicited  
7 funds for a federal campaign at the Christmas breakfast. *See* Resp. at 5. To the contrary, when  
8 asked about a potential federal candidacy at the breakfast, he reportedly responded, "We'll let  
9 you know." *See* p. 5, n.7, *supra*. Furthermore, Respondents assert that the Christmas breakfast  
10 was similar to events that the State Committee held in previous years.<sup>11</sup> *See* Resp. at 2. In  
11 addition, Respondents assert that they sent annual Christmas cards to Tracy's state senate  
12 constituents.<sup>12</sup> *See id.* at 5. Nor is there any other available information to suggest that Tracy  
13 became a federal candidate earlier than January 2013, when he formally declared his candidacy.

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<sup>9</sup> The 4th Congressional District of Tennessee where Tracy was a federal candidate encompasses Tracy's entire 14th state senate district plus several other counties. *See* <http://www.capitol.tn.gov/districtmaps/index.html> (maps of Tennessee congressional and state senate districts).

<sup>10</sup> During the 2014 election cycle to date, the Federal Committee has disclosed payments to Barrett Johns or Rachel Barrett & Co., LLC, totaling \$88,674, primarily for "finance consulting" or "fundraising consulting." Nevertheless, the available information does not suggest that Barrett Johns' work for the State Committee supported Tracy's federal campaign.

<sup>11</sup> *Cf.* Advisory Opinion 2009-26 (Coulson) (state legislative district event and related communications by state representative who was already a federal candidate was not in connection with a federal election because there would be no solicitation of donations or express advocacy supporting her federal campaign or any other federal election activity occurring during the event, and because she had held similar events in past years when she was not a federal candidate). We note, however, that the costs for the 2012 event appear to have been substantially greater than in previous years. The State Committee's tailgate party at a Middle Tennessee State University football game in 2011 cost a total of \$1,555. *See* Resp. at 2; Amended Early Year End Supplemental Report for 2011. Respondents state that the State Committee held a fish fry for constituents in 2010, but the only reference to a specific disbursement concerning a fish fry are to the State Committee donating \$250 to a fish fry sponsored by the Rotary Club of Smyrna. *See* Resp. at 2; Amended Early Year End Supplemental Report for 2010.

<sup>12</sup> While the State Committee may have sent Christmas cards to constituents in years prior to 2012, there was no specific description of disbursements related to Christmas cards on its disclosure reports in previous years.



1 See 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)) (federal candidate \$5,000 contribution  
2 and expenditure threshold).<sup>13</sup>

3 The prohibitions of section 30125(e) (formerly 441i(e)) apply to federal candidates and  
4 entities established, financed, maintained or controlled by such candidates. Since Tracy does not  
5 appear to have been a federal candidate at the time of the State Committee's activities at issue  
6 here, he does not appear to have been subject to the provisions of section 30125(e) (formerly  
7 441i(e)) at that time.<sup>14</sup> Accordingly, we recommend that the Commission find no reason to  
8 believe Respondents violated 52 U.S.C. § 30125(e) (formerly 2 U.S.C. § 441i(e)) in connection  
9 with the allegations in this complaint.

10 Further, as a state officeholder, Tracy is subject to the section 30125(f) (formerly section  
11 441i(f)(1)) prohibition on paying for a public communication that PASOs a clearly identified  
12 federal candidate unless the funds are subject to the limitations, prohibitions, and reporting  
13 requirements of the Act. The public communications at issue, however – the invitation to the  
14 Christmas breakfast, the Christmas card and the legislative survey – pre-date Tracy's status as a  
15 federal candidate.<sup>15</sup> See Resp., Attachs. C, D, G. Thus, the communications did not PASO a

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<sup>13</sup> An individual who has not yet decided to run for office may "test the waters" in advance of candidacy by raising and spending funds while making that decision. 11 C.F.R. §§ 100.72, 100.131. These funds may be raised and used for the limited purpose of determining whether an individual should become a candidate. *Id.* So long as the individual is "testing the waters," he or she is not required to file a statement of candidacy pursuant to 52 U.S.C. § 30102(e)(1) (formerly 2 U.S.C. § 432(e)(1)) and 11 C.F.R. § 101.1(a). The "testing the waters" exception does not apply, however, when an individual raises or spends more than \$5,000 for "activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign." 11 C.F.R. §§ 100.72(b), 100.131(b). Although Tracy was reportedly considering a run for Congress prior to his reported January 1, 2013, announcement of candidacy, the available information does not suggest that Tracy conducted any "testing the waters" activity that crossed into federal candidacy before that date.

<sup>14</sup> At the point that Tracy became a federal candidate, the provisions of section 30125(e) (formerly 441i(e)) applied to himself and his Federal and State Committees which he established, financed, maintained or controlled. See Advisory Op. 2009-26 (Coulson) at 5; Advisory Op. 2007-01 (McCaskill) at 3.

<sup>15</sup> Given the amount spent by the State Committee on these communications, for example, \$20,388.03 on the printing and mailing of the Christmas card, and the wide distribution to "state constituents," we can reasonably infer that they would constitute "mass mailings" (*i.e.*, more than 500 pieces) under the Act, and thus constitute "public

1 clearly identified federal candidate. We therefore recommend that the Commission find no  
2 reason to believe that Respondents violated 52 U.S.C. § 30125(f) (formerly 2 U.S.C. § 441i(f)) in  
3 connection with the allegations in this complaint.<sup>16</sup> We also recommend that the Commission  
4 close the file.

#### 5 IV. RECOMMENDATIONS

- 6 1. Find no reason to believe that Jim Tracy; Jim Tracy State Senate Committee and  
7 Adam Coggin in his official capacity as treasurer; and Jim Tracy for Congress and  
8 Shane Reeves in his official capacity as treasurer violated 52 U.S.C. §§ 30125(e) or  
9 30125(f) (formerly 2 U.S.C. §§ 441i(e) and 441i(f)).  
10  
11 2. Approve the attached Factual and Legal Analysis.  
12  
13 3. Approve the appropriate letters.  
14

communications" for purposes of section 30125(f) (formerly 441i(f)). *See* Resp. at 2; 52 U.S.C. § 30101(22), 30101(23) (formerly 2 U.S.C. §§ 431(22), 431(23)).

<sup>16</sup> The Federal Committee disclosed receiving contributions from the State Committee in the amount of \$1,000 each on June 30, 2013, and March 28, 2014. *See* Amended 2013 July Quarterly Report at 118 and Amended 2014 April Quarterly Report at 66. Because the State Committee is not registered with the Commission, the Reports Analysis Division (RAD) questioned the 2014 contribution in a Request for Additional Information (RFAI) to ensure that permissible funds were used to make the contribution. *See* RFAI to Jim Tracy for Congress (April 21, 2014). Because of the low amount of Tracy's State Committee's contributions to his Federal Committee, we are not making any recommendation with respect to these contributions. RAD's determination on a possible referral will be made at the end of the election cycle after reviewing the Federal Committee's amount of prohibited, excessive, and other impermissible contributions that were not refunded within the appropriate time. *See* 2013-2014 RAD Review and Referral Procedures, Standard 5, pp. 54-56.

4. Close the file.

10-15-14

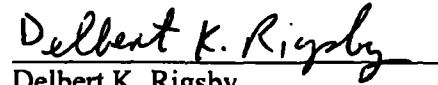
Date



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